Supreme Court, U.S.
FILED
OCT 18 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM 1971

No. 71-548

STEVEN HAMILTON, *Petitioner*

vs.

PEOPLE OF THE STATE OF CALIFORNIA, *Respondent*

PETITION FOR WRIT OF CERTIORARI
to the Appellate Department of the Superior Court, in and for the County of Alameda, State of California

PAUL N. HALVONIK,
CHARLES C. MARSON,
American Civil Liberties Union
of Northern California,
593 Market Street, Suite 227,
San Francisco, California 94105,
Telephone: (415) 433-2750,
Attorneys for Petitioner.

PERNAU-WALSH PRINTING CO. SAN FRANCISCO, CALIFORNIA

Subject Index

	Page
Opinions below	2
Jurisdiction	2
Question presented	3
Constitutional and statutory provisions involved	3
Statement of the case	4
Reasons for granting the writ	10
Conclusion	17

Table of Authorities Cited

Cases

	Pages
Bantam Books v. Sullivan, 372 U.S. 58 (1963)	13
Brandenberg v. Ohio, 395 U.S. 444 (1969)	13
Bridges v. California, 314 U.S. 252 (1941)	13, 14, 15
Brown v. Louisiana, 383 U.S. 131 (1966)	14
Carroll v. Commissioners of Princess Anne County, 393 U.S. 175 (1968)	13
Chase v. Robson, 435 F.2d 1059 (7th Cir. 1970)	12, 16, 17
Craig v. Harney, 331 U.S. 367 (1946)	13
Dorfman v. Meisner, 430 F.2d 558 (7th Cir. 1970)	12
Edwards v. California, 314 U.S. 160 (1941)	2
Hamilton v. Municipal Court, 270 Cal.App.2d 797 (1969), cert. denied 396 U.S. 985 (1969)	2, 16
In re Berry, 68 Cal.2d 137 (1968)	17
N.A.A.C.P. v. Button, 371 U.S. 415 (1963)	13
New York Times Co. v. Sullivan, 376 U.S. 254 (1964)	17

Pages

Pennekamp v. Florida, 328 U.S. 331 (1946) 13

Schmerber v. California, 384 U.S. 757 (1966) 2
Sheppard v. Maxwell, 384 U.S. 333 (1966) 14, 15
State ex rel., Superior Court of Snohomish Co. v. Sperry, 79 Wash.2d 69, 483 P.2d 708 (1971) 12, 16, 17
Street v. New York, 394 U.S. 576 (1969) 11

Thornhill v. Alabama, 310 U.S. 88 (1940) 13

United States v. O'Brien, 391 U.S. 367 (1968) 14
United States v. Robel, 389 U.S. 258 (1967) 13
United States v. Tijerina, 412 F.2d 661 (10th Cir., 1969) cert. den. 396 U.S. 867 (1969) 12, 16

Walker v. City of Birmingham, 388 U.S. 307 (1967) 16
Wood v. Georgia, 370 U.S. 375 (1962) 13
Worcester Telegram and Gazette, Inc. v. Commonwealth, 238 N.E.2d 861 (Mass. 1968) 13

Codes

California Penal Code, Sec. 166(4) 4, 7

Constitutions

United States Constitution:
First Amendment 3, 9, 11, 15, 16, 17
Fourteenth Amendment 3, 9

Statutes

28 U.S.C., Sec. 1257(3) 3

Texts

1 Democracy in America, p. 280 (Bradley Ed. 1948) 15

In the Supreme Court
OF THE
United States

OCTOBER TERM 1971

No.

STEVE HAMILTON, *Petitioner*

vs.

PEOPLE OF THE STATE OF CALIFORNIA, *Respondent*

PETITION FOR WRIT OF CERTIORARI
to the Appellate Department of the Superior Court,
in and for the County of Alameda,
State of California

Petitioner Steven Hamilton prays that a writ of certiorari issue to review the opinion and judgment of the Appellate Department of the Superior Court in and for the County of Alameda, State of California, entered in the above-entitled case on July 20, 1971.

OPINIONS BELOW

The opinion of the Appellate Department of the Superior Court in and for the County of Alameda, State of California, is unreported and reproduced as Appendix B to this petition. Prior to trial petitioner sought a petition for writ of prohibition from the Superior Court of Alameda County, contending that the contempt citation was unconstitutionally issued. The petition was denied on July 6, 1967. The denial was affirmed by the Court of Appeal of the State of California, First Appellate District. The opinion of that Court, reported as *Hamilton v. Municipal Court*, 270 Cal.App.2d 797 (1969), *cert. denied* 396 U.S. 985 (1969), is reproduced as Appendix A to this petition.

JURISDICTION

The opinion of the Court below was entered on July 20, 1971. A petition for rehearing and certification of the case to the state Court of Appeal was timely filed on July 23, 1971. The petition for rehearing and certification was denied by order and judgment entered on July 27, 1971. Denial of the application for certification exhausted all appellate remedies available to petitioner making the opinion of the Court below the final judgment of the highest state court. See, e.g., *Schnerber v. California*, 384 U.S. 757 (1966) and *Edwards v. California*, 314 U.S. 160 (1941). The time in which to file a petition for writ of certiorari expires either on October 25,

1971, or October 18, 1971, depending upon whether the date upon which the denial of certification was filed or the date upon which the opinion of the Court below was filed is deemed controlling. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether, consistent with the First and Fourteenth Amendments, a pre-trial publicity order, which proscribes all comment by a defendant on "any issue likely to be involved" in a criminal trial (instead of only those comments which would be prejudicial to the trial's outcome) may serve as the basis for criminal conviction when there has been no factual showing that there was any danger that comments by the defendant could prejudicially influence the trial's outcome and when there has been no demonstration that the statements in fact made by the defendant affected, prejudicially or otherwise, the trial's outcome.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, First Amendment:

> "Congress shall make no law . . . abridging the freedom of speech. . . ."

United States Constitution, Fourteenth Amendment:

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Penal Code §166(4):

"Every person guilty of any contempt of court of either of the following kinds, is guilty of a misdemeanor:

. . . . . .

"4. Willful disobedience of any process or order lawfully issued by any court;"

STATEMENT OF THE CASE

Petitioner was part of a group of ten persons arrested November 30, 1966, on various misdemeanor charges arising out of a demonstration on the Berkeley campus of the University of California. The purpose of the demonstration was to protest the presence on the campus of recruiters for military service in the armed forces of the United States. Those arrested, including petitioner, were arraigned before the Municipal Court for the Berkeley-Albany Judicial District. On December 16, 1966, the Honorable George Brunn of that Court issued the following pre-trial order:

Pretrial Publicity Order

To assure a fair trial in this case it is essential to keep pre-trial publicity to an absolute minimum. Therefore, and in accordance with the discussion between the court and counsel in the presence of the defendants in open court this day,

A. The parties shall not, directly or indirectly, release to any news media information or opinion

concerning the trial or any issue likely to be involved therein, other than the date and place of trial, the names of the parties and counsel, the contents of the complaint, and the plea of defendants. Specifically, and without limitation, there shall be no public statements or releases concerning the merits of the complaint, the evidence or arguments to be adduced by either side, or trial tactics or strategy.

B. This order shall apply inter alia to the parties and their counsel, to all law enforcement agencies, to the Regents of the University of California and their agents and employees and to the Associated Students of the University of California, their members and affiliated organizations.

The court recognizes the difficulties inherent in framing any order in this matter and expects the full cooperation of the parties and their counsel in carrying out the letter and the spirit of this order. The court will entertain motions for any further orders that may be necessary or desirable in this matter.

On January 13, 1967, petitioner participated in issuing the following written statement to the press:

We have decided to speak to the Press for the following reasons:

1. The gag rule comes after the University, Sacramento, and powerful interests in the State have already prejudiced people against us.

2. We cannot accept the precedent of a gag rule against the defense in political trials where it would be especially prejudicial because the prosecution always attempts to hide political activities behind legal language.

3. We were arrested as scapegoats in a constitutionally protected political demonstration—arrested not because of what we did that day, but because we have all been active in effective movements against the war, University autocracy, and racism.

The reason for this press conference is that we are making an attempt to insure ourselves a fair and public trial. A recent ruling by the Supreme Court reversed the conviction of Sam Sheppard on the basis that pre-trial publicity on the part of the prosecution made it impossible for Sheppard to get a fair trial. It was felt that the jury had to be prejudiced against Sheppard.

Judge Brunn, in ordering both the prosecution and the defense to desist from participating in pre-trial publicity, was we feel acting sincerely in an attempt to guarantee us a fair trial. But the effect of his ruling is the reverse. The harm against us is already done; the jury has already been prejudiced. The University, both governors, and hostile elements in the community have already given to the people of California a false view of what occurred. We have been publicly branded a small group of outside agitators who planned in advance and then provoked the events which culminated in the student strike. If his is the only view that the public is allowed to hear, how could a jury help but be prejudiced? We must speak to the press. We must give the people of the State of California our view of the events. This will not guarantee a fair trial, but it will at least make one more possible.

Nobody planned in advance the sit-in that occurred. The University had in the past permitted

picketing of military tables. How could we have known that they would tear up picket signs this time? How could we have known that, when a football player would strike a protester, the University police would arrest the person struck and not the assailant? It was events such as these that provoked the sit-in, by their nature, they could not be planned in advance.

As to the sit-in itself, some of those arrested did play a leading role in it. However, some played no role. There were also many students in leadership positions. None of these were arrested. The reason we were singled out is that we have in the past participated in activities on the Campus that the University disapproved of and found embarrassing, such as Vietnam Day, and Black Power Day. This is, then, clearly a case of political persecution.

As to our rights to be active politically on the Campus, we feel that these are fully protected by the Constitution. The right of free political expression and association are supposed to be the inalienable rights of all citizens. When we enter the Campus of the University of California, we do not surrender our citizenship. It is therefore unconstitutional to demand that we surrender our political rights. Some of the most significant political events in the country have occurred at the University of California. We believe we have not only a legal right but also a moral duty to participate in them.

Petitioner was arrested on the same day the statement was issued and charged with a misdemeanor violation of Penal Code §166(4). Three days later,

January 16, 1967, petitioner went to trial on the original charges, was convicted and sentenced.

Petitioner then sought a writ prohibiting his trial on the contempt charge. The writ was denied (Appendix A) and the contempt case went to trial. At the trial, petitioner testified that the statement of January 13, 1967, had been issued because he and his co-participants felt they were unfairly deprived of an opportunity to answer criticisms made of them in the press[1] and because they felt it infringed their First Amendment rights of free expression. The statement was issued only after consultation with attorney Melvin Belli of San Francisco. Mr. Belli, who was represent-

[1]Press-clippings were introduced into evidence as exhibits by petitioner at the trial. They, together with the Settled Statement on Appeal, from which the above narrative is derived, constitute the record on appeal. They reveal that the events of November 30, 1966, including the arrest of petitioner, prompted a "student strike" which swept the Berkeley campus during the pre-Christmas season. The "sit-in," petitioner's arrest and arraignment, and the ensuing "student strike" received enormous publicity in the press —mostly condemnatory in character. On December 2, 1966, the *Berkeley Daily Gazette* editorialized that "if the provocateurs must be arrested twice a day and hauled off to Santa Rita, then that is what should be done. The nonstudent radicals must be stopped and stopped now. They must not be allowed to continue to mislead and agitate the campus." (Item B, *Gazette* clippings.) The same editorial also charged that petitioner and his co-defendants were part of a long range, carefully planned program of the "radical left" to disrupt the University and the City of Berkeley as the "target city of the leftward movement." While some faculty members expressed support for the strike demands, others joined Chancellor Roger W. Heyns in declaring that "outsiders came on campus with the intention of breaking campus rules and they did so. In addition, state laws were violated and arrests were made. . . . The University must have the authority to protect itself from such illegal intrusions to insure its operation and integrity." (Item C-2, *Gazette* clippings.) Governor-Elect Reagan charged that petitioner and his co-defendants were "middle-aged juvenile delinquents hanging around the University." (Item b, *Oakland Tribune* clippings.) An *Oakland Tribune* editorial on the subject warned against granting any amnesty in the cases. (Item b-2, clippings.)

ing petitioner and his co-defendants on the charges arising from the demonstration, advised them that the court order was unconstitutional and that it could and should be tested by issuing a statement. Petitioner conceded that Judge Brunn had not been asked to modify the order but explained that Mr. Belli informed neither him nor his co-defendants that an application for modification was an alternative procedure and advised both him and his co-defendants that the only way to test the order was to issue a statement. Petitioner further testified that his intention and purpose in participating in issuing the statement of January 13, 1967, was, on advice of counsel, to test the constitutionality of a court order that he and counsel believed violative of the First and Fourteenth Amendments to the United States Constitution.

Petitioner contended, at trial, that his conduct was constitutionally protected and not criminally punishable because 1) the order of December 1966 is unconstitutionally vague and overbroad in violation of the First and Fourteenth Amendments to the United States Constitution and 2) there is no evidence that petitioner willfully violated the court's order because the evidence establishes that petitioner participated in issuing the statement on advice of counsel and for the purpose of challenging the constitutionality of the Court order.

Petitioner was found guilty as charged and, on June 1, 1970, was sentenced to county jail for 180 days (140 days suspended), three years probation and a fine of $500.00.

The Appellate Department of the Superior Court affirmed the conviction, declined to certify the case to the California Court of Appeal and declined to stay the execution of petitioner's sentence.

By order dated August 18, 1971, Mr. Justice Marshall stayed execution of petitioner's sentence pending disposition of this certiorari petition.

REASONS FOR GRANTING THE WRIT

Petitioner was arrested during a demonstration at the University of California. Subsequent to his arrest and arraignment he released a statement in which he expressed these ideas:

1. He was opposed to court restraints on statements by defendant in "political trials."

2. The incident that resulted in his arrest involved constitutionally protected conduct.

3. The "sit-in" demonstration in which he participated was not a calculated one, as some had contended in public print, but spontaneous.

4. He and his co-defendants had been singled out for arrest because of their political views.

5. The very statement he was making was constitutionally protected.

Because he made that statement he will, unless this Court rules otherwise, spend at least 40 days in the county jail, three years on probation and will pay a fine of $500.00. He will do so in spite of the fact that everything he said would appear, on its face, to be

constitutionally protected and although there seems to be no legitimate governmental purpose served by punishing him for his utterance.

What petitioner had to say was surely of public moment. Surely the public would be interested in knowing whether persons who had participated in the sit-in demonstration agreed with the official's contentions that the sit-in was calculated and not spontaneous. The public had already been exposed to the "conspiracy" theory of the sit-in; had the defendants remained silent on the matter the public would naturally infer that the official version was indisputably correct. The people had heard the government's side, why should they not hear the other side?[2]

Whether the sit-in had been calculated or not would seem to be beside the point at the criminal trial, because petitioner and his co-defendants were not charged with a conspiracy. Manifestly, then, that portion of the statement could not conceivably have prejudiced the prosecution's case in the impending trial.[3] Indeed, it is difficult to perceive how any of petitioner's statements could have posed any genuine

---

[2]The public statement ban, it will be remembered, extended to "agents and employees and to the Associated Students of the University of California, their members and affiliated organizations." The ban, in other words, reached everyone remotely connected with the sit-in.

[3]Nor could petitioner's expressed disapproval of pre-trial publicity orders have conceivably had any effect on his prosecution. But that statement too is part of petitioner's offense and a portion of the general verdict of conviction. Since his conviction rests at least partially on expression unquestionably protected by the First Amendment, his conviction is, under any theory of the case, constitutionally infirm. See *Street v. New York*, 394 U.S. 576, 585-587 (1969) and authorities therein collected.

threat of prejudice to the prosecution's case. More importantly, the record does not show how the statements could have prejudiced the case because prejudice to the prosecution's case was not an element of the offense. The sweeping restraint on expression issued by Judge Brunn does not limit itself to statements that could prejudicially affect the trial and does not set forth any factual findings that would suggest that any statements by anybody could have had a prejudicial effect on the trial. Accordingly, the prosecution was under no burden to prove potential or actual prejudice, it only had to establish that petitioner "directly or indirectly, release[d] to any news media information or opinion concerning the trial or any issue likely to be involved therein. . . ." And that is all that it did.

The rule in petitioner's case, the rule now obtaining in California, is that a trial court may, without demonstration of necessity, issue an order prohibiting parties in a trial, and an entire University community, from making any public remark about the trial or any issue which might arise at the trial.

The California rule[1] squarely conflicts with decisions of this Court holding that where courts employ their contempt powers to punish otherwise constitu-

[1]The California approach to pre-trial restraints on public statements is similar to the one adopted in the Tenth Circuit. See *United States v. Tijerina*, 412 F.2d 661 (10th Cir. 1969) *cert. denied* 396 U.S. 867 (1969). The rule in Washington and the Seventh Circuit conflicts, at least in principle, with the California and Tenth Circuit decisions. See *State ex rel., Superior Court of Spokomish. Co. v. Sperry*, 79 Wash.2d 69, 483 P.2d 708 (1971); *Chase v. Robson*, 435 F.2d 1059, 1061 (7th Cir. 1970); cf. *Dorfman v. Meisner*, 430 F.2d 538 7th Cir. 1970).

tionally protected speech they can do so only pursuant to the clear and present danger standard[5] as well as the general doctrine invalidating restraints on free expression which have not been drawn with narrow specificity so as to be no broader than necessary to prevent the evils sought to be regulated.[6]

The facts of this case illustrates the wisdom of those general principles and the peril to fundamental liberties posed by their abandonment. Petitioner's criminal act was a "political" matter. That is to say, the criminal event, a sit-in demonstration was, in addition to being a proscribed act, a public event which excited general remark and interest. The public wanted to know what motivated the demonstrators, the demon-

---

[5] *Wood v. Georgia*, 370 U.S. 375 (1962); *Pennekamp v. Florida*, 328 U.S. 331 (1946); *Craig v. Harney*, 331 U.S. 367 (1946); *Bridges v. California*, 314 U.S. 252 (1941). See also *Worcester Telegram and Gazette, Inc. v. Commonwealth*, 238 N.E.2d 861 (Mass. 1968). On the continuing vitality of the clear and present danger test generally, see *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

[6] See, e.g., *United States v. Robel*, 389 U.S. 258, 268 (1967); *N.A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963); *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940). That general rule is, of course, particularly appropriate where a prior restraint is concerned for a prior restraint bears "a heavy presumption against its constitutional validity." See, e.g., *Bantam Books v. Sullivan*, 372 U.S. 58, 70 (1963). And the general rule requiring precision in regulation of fundamental liberties is, of course, applicable to court orders. As this Court observed in *Carroll v. Commissioners of Princess Anne County*, 393 U.S. 175, 183-184 (1968):

> ". . . An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order. In this sensitive field, the State may not employ 'means that broadly stifle fundamental liberties when the end can be more narrowly achieved.' *Shelton v. Tucker*, 364 U.S. 479, 488, 5 L.Ed.2d 231, 237, 81 S.Ct. 247 (1960). In other words, the order must be tailored as precisely as possible to the exact needs of the case. . . ."

strators wanted the public to be informed about their motivations and inspirations. Emphasizing the spontaneity of their act was of profound importance to the demonstrators; they did not want the public to imbue what they considered an idealistic act with a base and ulterior purpose. Their criminal conduct had also been communicative conduct and they did not want their message obscured.[7]

But even though petitioner did no more than issue a public statement on a matter of vital interest to the local community and even though that statement could not realistically be said to pose any substantial danger to any legitimate state concern, he has been criminally punished by California for its utterance. Petitioner is being punished on the authority of *Sheppard v. Maxwell*, 384 U.S. 333 (1966). California has adopted the guidelines there suggested for protecting a defendant's constitutional right to a fair trial and transmuted them into a restraint on the right of free expression of a criminally accused who affirmatively desires to exercise that right. If *Sheppard v. Maxwell* has overruled *Bridges v. California, supra*, then the rule restraining free expression ought at least be limited, by *Sheppard's* own terms, to matters which could conceivably prejudice the outcome of the

[7]This Court has previously recognized the communicative nature of a sit-in demonstration. *Brown v. Louisiana*, 383 U.S. 131 (1966). It has also recognized that criminal conduct can be communicative. *United States v. O'Brien*, 391 U.S. 367 (1968). It is not petitioner's contention that this criminal act, because intermixed with political expression, was constitutionally protected. *O'Brien* settled that. But petitioner does insist that the state cannot politically silence him by the simple expedient of charging him with a crime.

trial. See *Sheppard v. Maxwell, supra,* 384 U.S. at 361-363.

Sheppard, however, should not be read to overrule *Bridges. Bridges* recognizes that the judiciary, along with the legislative and executive branch of the government, is controlled by the First Amendment. Petitioner's case, after all, is not at all unique. It is not unusual, in our nation, for a criminal trial to involve matters which are of immediate public concern. De Toqueville's observation that "scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question . . ."[8] is as accurate today as it was in 1835.[9]

---

[8] 1 DEMOCRACY IN AMERICA, 280 (Bradley Ed. 1948).

[9] This Court made an observation similar to de Toqueville's in *Bridges v. California, supra,* 314 U.S. at 268-69:

> "It must be recognized that public interest is much more likely to be kindled by a controversial event of the day than by a generalization, however penetrating, of the historian or scientist. Since they punish utterances made during the pendency of a case, the judgments below therefore produce their restrictive results at the precise time when public interest in the matters discussed would naturally be at its height. Moreover, the ban is likely to fall not only at a crucial time but upon the most important topics of discussion. Here, for example, labor controversies were the topics of some of the publications. Experience shows that the more acute labor controversies are, the more likely it is that in some aspect they will get into court. It is therefore the controversies that command most interest that the decisions below would remove from the arena of public discussion.
>
> "No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression. Yet, it would follow as a practical result of the decisions below that anyone who might wish to give public expression to his views on a pending case involving no matter what problem of public interest, just at the time his audience would be most receptive, would be as effectively discouraged as if a deliberate statutory scheme of censorship had been adopted."

This case, because it is not unique, is an appropriate one for the exercise of this Court's certiorari jurisdiction. Since the decision in *Hamilton v. Municipal Court*, 270 Cal.App.2d 797 (1969), broad and sweeping prior restraints on the expression of the criminally accused are now a matter of course in California. And, as the opinion in *State, ex rel., Superior Court of Snohomish Co. v. Sperry*, *supra*, *Chase v. Robson*, *supra*, and *United States v. Tijerina*, *supra*, demonstrate, this new form of broad prior restraints is not an exclusively California matter.

There is also another reason why this case is a particularly good one for review of the significant First Amendment issue it presents.[10] Because this court's decision in *Walker v. City of Birmingham*, 388 U.S. 307 (1967), can be read to validate contempt convictions resting upon facially unconstitutional court orders, it will be extremely difficult for a case challenging an overbroad publicity order to reach this Court which will not contain a *Walker* issue.[11] This case, however, contains no *Walker* issue; it poses the First Amendment issue exclusively. This case is unfreighted with a *Walker* problem, because,

---

[10]Since certiorari was denied when this case was styled *Hamilton v. Municipal Court*, 396 U.S. 985 (1969), one might infer that this Court does not share the opinion that this case is one meriting review. We prefer to think that the earlier denial of certiorari was produced by the posture of the case: an interlocutory appeal. Respondent cannot now argue, as it did before, that the broad language of the prior restraint might be narrowed at trial. We have had the trial and the restraint was not narrowly construed.

[11]The Supreme Court of Washington noted the *Walker* dilemma confronting anyone who would challenge a pre-trial publicity order in *State ex rel. Superior Court of Snohomish Co. v. Sperry*, *supra*, 483 P.2d at 611-612.

under California law, a court order unconstitutional on its face is considered a nullity which may be violated with immunity. *In re Berry*, 68 Cal.2d 137 (1968).[12]

Petitioner is not being punished because he violated a court order; he is being punished for violating a court order deemed constitutional by the Court below.

CONCLUSION

The First Amendment protects our most cherished freedom. We have "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Any court order inhibiting the exercise of freedom of speech should, at the very least, contain specific findings explaining its necessity, *Chase v. Robson*, *supra*, 435 F.2d at 1061, and should be narrowly drawn to insure that free expression is inhibited only to the extent required for elimination of the substantive evil that has inspired the order. Id. at 1061-1062; *State ex rel. Superior Court of Snohomish Co. v. Sperry*, *supra*, 483 P.2d at 613. The court order in this case does not meet even those minimal standards.

---

[12] In California one may violate a facially unconstitutional court order even though he has not sought judicial modification of that order. *In re Berry*, *supra*, 68 Cal.2d at 148-149.

For that reason, and all the reasons mentioned, petitioner respectfully urges that his petition for writ of certiorari be granted.

Dated, October 12, 1971.

Respectfully submitted,

PAUL N. HALVONIK,

CHARLES C. MARSON,

By PAUL N. HALVONIK,

American Civil Liberties Union
of Northern California,

Attorneys for Petitioner.

(Appendices Follow)